

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125-RCJ
	)	Subproceedings: C-125-B and C-125-C
Plaintiff(s),	)	
	)	3:73-CV-0125-RCJ-WGC
	)	3:73-CV-0127-RCJ-WGC
vs.	)	3:73-CV-0128-RCJ-WGC
	)	
WALKER RIVER IRRIGATION, et al.,	)	MINUTES OF PROCEEDINGS
	)	
Defendant(s).	)	DATE: February 7, 2013
	)	
	)	
	)	

PRESENT: HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

Deputy Clerk: Katie Lynn Ogden Reporter: Kathy French

**Counsel Present:** Wes Williams, Jr., Gordon DePaoli, Dale Ferguson, Simeon Herskovits, George Benesch, Marta Adams, Karen Peterson, David Negri, Andrew Guss Guarino, Therese Ure, Harry Swainston

**Counsel Appearing Telephonically:** Michael Neville, Susan Schneider, Stacey Simon, Michael Hoy, Christopher Watson

**Special Appearance:** Eileen Rutherford (Paralegal obo United States, telephonically) and Jim Shaw (Watermaster)

PROCEEDINGS: STATUS CONFERENCE

10:12 a.m. Court convenes.

The court and counsel confer regarding the agenda items as outlined in the Amended United States' Status Report (Doc. #1129 in Case No. 3:73-CV-0125-RCJ-WGC). Counsel present their positions as to each of the items.

**I. Preliminary Matters**

**Agenda Items**

1. **C-125-B:**
  - a. Completion of Service and Service Issues:
    - i. Status update from the United States, State of California and Mono

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County on possible service on claimants with dormant riparian surface water rights under the laws of California.

1. High number of Disclaimer of Interest forms returned due to some properties on an irrigation ditch classified as “riparian.”
2. Status of additional research needed to complete service of dormant riparian surface water rights holders.
3. Service phases.

Mr. Guarino advises the court that United States will need to do some follow-up research on the materials they are receiving back from the most recent service notice mailings. Mr. Guarino further informs the court that there were a number of entities/persons who were sent a service notice but are not dormant riparian water rights holders. It is the United States’ intention to focus in on this issue so that these persons/entities are ultimately eliminated from the service list.

With regard to the service phases, Mr. Guarino explains that the United States is in the process of securing additional funds to first, research the outstanding issues that developed as a result of the last mailing, and, second, perform the act of service throughout California that needs to be accomplished.

- ii. Status updates on the following:
  1. Update and circulating the draft caption
  2. Compiling and circulating a preliminary list of defendants who have filed a notice of appearance, including those defendants represented by counsel.
  3. Compiling and circulating a preliminary list of persons and entities that were served and have not filed a notice of appearance.

The United States has circulated the preliminary list of defendants who have filed a notice of appearance and the list of person and entities that were served and have not filed a notice of appearance. There has been some feedback and comments made by other parties with regard to the draft caption and corrections are being made.

- b. Case Management Issues:
  - i. Argument on Motion to enter Supplemental Case Management Order

The United States requests the court to issue a Supplemental Case Management Order and argues that doing so would be an effective and efficient way to move this case forward.

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By entering the Supplemental Case Management Order, as proposed by the United States, no briefing of the “threshold issues” would occur. Instead, the parties would be required to file any Federal Rules of Civil Procedure 12(b) motions that would apply to both the Tribal claims as well as the federal claims.

Defendants oppose the United States’ request to supplement the Case Management Order. Mr. DePaoli explains to the court that defendants are not contending that the Case Management Order mandates litigation of all threshold issues or requires separate litigation on a series of undetermined threshold issues. Instead, Defendants argue that the first order of business should be to address subject matter jurisdiction and then, depending on the outcome of subject matter jurisdiction, proceed to determine whether there are any other threshold issues. Should it be determined that there are threshold issues, then the parties would be allowed to proceed with appropriate discovery on that issue and resolution of that issue, either by way of a dispositive motion or through a separate evidentiary hearing.

After hearing argument, the court advises the parties that the Case Management Order will be modified so that Phase I will include the filings of dispositive motions that can be litigated without discovery. While potentially, the parties may simultaneously file dispositive motions which will require discovery, and any party seeking to file such a motion will have to seek leave from the court to be able to undertake discovery relative to such a dispositive motion. The court notes that it is not precluding or eliminating the threshold issue altogether, and acknowledges that threshold issues may be relevant and beneficial as the case progresses.

The court further advises the parties that it will defer the requirement for any Answers or Counter-Claims, or Answers to Counter-Claims or Cross-claims, until after Phase I.

The court requests that the United States draft a proposed (amended) Supplemental Case Management Order. The parties are directed to discuss the best way to implement the Supplemental Case Management Order and to be prepared to address this as an agenda topic for the March 13, 2013, status conference.

**2. C-125-C:**

- a. Completion of Service and Service Issues:
- b. Status update from Mineral County/Walker Lake Working Group on service.

Simeon Herskovits informs the court that Mineral County filed a Service Report on January 9, 2013. Mr. Herskovits explains that there is a short supplement to the Service Report to include two of the three remaining outstanding defendants which is explained further in the supplement. As recorded in the Service Report and supplement, all of the defendants have been served, or have filed waivers after they received the service package in the mail. Furthermore, there are thirteen (13) proposed defendants who are requesting to be dismissed from the case and deleted

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from the caption. Additionally, there are three (3) new persons or entities whose legal names identifying them had to be changed.

Mr. Hertskovits explains that, overall, there will be three newly substituted entities (so long as the court approves the three entities to be substituted in), and the State of California as the only other defendants that remain to be served. Mr. Hertskovits anticipates that service will be completed before the end of February. At the point service is complete, service by publication will need to be addressed.

Mr. Hertskovits advises the court that an order that has been circulated entitled "Proposed Order Concerning Status of Remaining Proposed Defendant to Be Served by Rule 4 Service"; however, this proposed order has not been filed electronically. The court requests that the proposed order be filed electronically.

- c. Status update from Mineral County/Walker Lake Working Group on its efforts to compile a list of *pro se* parties.

Mineral County will finish the list of *pro se* defendants or parties and circulate the list once personal service is completed.

- d. Consideration of draft Order Setting Supplemental Briefing Schedule for Defendants Appearing after Initial Briefing Schedule on Motion to Intervene Was Established.

The proposed order has been circulated to all the primary parties on Tuesday, February 5, 2013. The court and parties discuss the matter of supplemental briefing and the desire of the court to move forward with the Motion to Intervene as expeditiously as possible. The court explains that it will discuss with Chief Judge Jones the topic of affording the additional parties/entities the opportunity to respond to the Motion to Intervene.

The court request Mr. Hertskovits to electronically file the proposed Order Setting Supplemental Briefing Schedule.

**3. Issues Common to Both Subproceedings:**

- a. Publication:
  - i. Scope: general notice and notice to identified but unserved persons/entities.
  - ii. Proposal for publication process.

